INDEX.

PETITION FOR WRIT OF CERTIORARI 1

Summary Statement of Matter Involved..... 1

Basis of This Court's Jurisdiction..... 2

Questions Presented..... 2

Reasons Relied on for Allowance of Writ..... 3

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.. 5

Opinions of the Courts Below..... 5

Grounds on which Jurisdiction of This Court Is Invoked 5

Statement of the Case..... 5

Errors Intended to be Urged..... 8

Argument 9

I. An Insurance Policy Containing Language Susceptible of Two or More Constructions Should Be Construed Strictly Against the Company Which Prepared It and Favorably to the Person for Whose Benefit the Policy Was Written and Who Had No Voice in its Preparation..... 9

(a) The Tractor and Trailer Combination Was Not Left Unattended while in Transit..... 9

(b) The Language of the Insurance Policy Was, Without Any Basis in Fact or in Law, Construed by the Circuit Court of Appeals in Favor of the Insurer..... 10

(c) The Insurer, Which Wrote the Policy, Chose the Language and Should Have Made it Unmistakable 11

II. The Decision of the Circuit Court of Appeals Is In Conflict with the Long Established Law of Ohio, Its Own Rulings and Those of This Court 12

Conclusion 14

TABLE OF AUTHORITIES.

Cases.

Aschenbrenner vs. U. S. Fidelity & Guaranty Company, 292 U. S., 80.....11, 14

Erie Railroad Company vs. Tompkins, 304 U. S., 64.. 12

Fidelity & Deposit Company of Maryland vs. Friedlander, 101 Fed. 2d, 106.....3, 13

National Surety Company vs. Mutual Veneer Company, 66 Federal (2d) 88..... 13

Ries & Sons, Inc. vs. Automobile Insurance Company, 121 N. J. L., 493, 3 Atl. 2d, 610..... 10

Ruhlin vs. New York Life Insurance Company, 304 U. S., 202, 58 Supreme Court, 860..... 12

State of Ohio vs. Executors of Thomas Worthington, 7 Ohio, Part 1, page 171.....3, 12

Text.

Williston on Contracts, Section 621, page 1788..... 13

Statute.

Judicial Code, Section 240 (a) (U. S. Code, Title 28, Sec. 347 (a))..... 2

In the Supreme Court of the United States

OCTOBER TERM, 1941.

No.....

FIXLER BROS., INC.,
a Corporation,
Petitioner,

vs.

THE AUTOMOBILE INSURANCE COMPANY
OF HARTFORD, CONNECTICUT,
a Corporation,
Respondent.

PETITION FOR WRIT OF CERTIORARI
To the United States Circuit Court of Appeals
For the Sixth Circuit.

Fixler Bros., Inc., a corporation of the State of Illinois, petitions this Court to issue its writ of certiorari to review the judgment of the United States Circuit Court of Appeals for the Sixth Circuit, entered on March 6th, 1941 in Cause No. 8591 in said Court, wherein this petitioner was Appellee and the respondent, Appellant.

SUMMARY STATEMENT OF MATTER INVOLVED.

This action was originally brought by Fixler Bros., Inc. in the State Court of Ohio under the Ohio Statute against The Automobile Insurance Company of Hartford, Connecticut, insurer of The Gregg Carloading & Distributing Company, an interstate trucking company, then in bankruptcy in Ohio, to recover the amount of a judgment previously obtained against the Gregg Company in the Municipal Court of Chicago covering the loss of merchandise suffered when a partially loaded truck containing the

goods of Fixler Bros., Inc. was stolen from an attended parking lot in New York City, N. Y. on May 10, 1937, where it was parked over night awaiting completion of its load at the Gregg dock before beginning its transportation from New York to Chicago.

The cause, on petition of the Insurance Company, was removed from the State Court to the District Court of the United States for the Northern District of Ohio, Eastern Division. A jury being waived, the case was tried to the Court and judgment was rendered in favor of Fixler Bros., Inc. in the sum of $3337.40. The Insurance Company filed its appeal in the Circuit Court of Appeals for the Sixth Circuit, and that Court reversed the District Court and entered judgment for Fixler Bros., Inc. in the sum of $239.39, the amount admitted by the Insurance Company to be due by reason of an endorsement attached to the policy.

BASIS OF THIS COURT'S JURISDICTION.

The statutory provision believed to sustain the jurisdiction of this Court to review the judgment of the Circuit Court of Appeals is Section 240 (a) of the Judicial Code (U. S. Code, Title 28, Sec. 347 (a)).

The judgment of the Circuit Court of Appeals was entered on March 6th, 1941.

QUESTIONS PRESENTED.

1. Did not the Circuit Court of Appeals fail to apply the law of Ohio and to follow its own ruling and those of this Court,—that an insurance policy containing language susceptible of two or more interpretations is to be construed strictly against the Company which prepared it and favorably to the party which had no voice in its preparation?

2. Did not the Circuit Court of Appeals in construing the language of the policy to require that only agents of the insured could attend the truck,—thereby eliminating at-

tendants in parking lots,—place such a construction on the language "not be left unattended" as unwarrantedly favored the insurer which had it within its power to define unmistakably the degree of care and kind of attendants required?

REASONS RELIED ON FOR ALLOWANCE OF WRIT.

(1) The decision of the Circuit Court of Appeals, in holding that language of an insurance policy, so obviously susceptible of two interpretations, contains no ambiguity, and then in construing that language most favorably to the insurer, is in direct conflict not only with the long established law of Ohio in the case of *State of Ohio vs. Executors of Thomas Worthington,* 7 Ohio, Part 1, page 171, but also with the law as declared by the Sixth Circuit Court itself in the case of *Fidelity & Deposit Company of Maryland vs. Friedlander,* 101 Fed. 2d, 106.

(2) If the decision be permitted to stand, it will have a severely deterrent effect upon shippers contemplating the use of interstate trucks,—a method of transportation only recently taken under the supervision of the Interstate Commerce Commission, and presumably to be developed and encouraged, especially at this critical time, when circumstances call for the fullest possible use of all available means of transportation of merchandise.

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